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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic, Social and Cultural Rights

CHINA: HONG KONG SPECIAL ADMINISTRATIVE REGION

1. The Committee considered on Economic, Social and Cultural rights the initial report submitted by China on articles 1 to 15 of the Covenant as applied in the Hong Kong Special Administrative Region (HKSAR) (E/1990/5/Add.43) at its 9th, 10th and 11th meetings (E/C.12/2001/SR.9-11), held on 27 and 30 April, and adopted, at its 29th meeting (E/C.12/2001/SR.24), held on 11 May 2001, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the well-prepared and detailed initial report, which conforms in general with the Committee's guidelines on reporting. The Committee also notes with appreciation the written replies to its list of issues and the additional statistics provided by HKSAR. The delegation's professionalism and openness contributed to a fruitful and constructive dialogue.

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B. Positive aspects

3. The Committee warmly welcomes the ratification of the Covenant by China.

4. The Committee warmly welcomes the withdrawal by HKSAR of reservations to articles 1 and 7 of the Covenant.

5. The Committee welcomes the wide consultations undertaken by HKSAR with civil society organizations and other interested parties as part of the preparation of its initial report. The Committee notes with appreciation that HKSAR made available to the public at large copies of the report.

6. The Committee commends HKSAR for its efforts to provide adequate housing for Hong Kong residents. In particular, the Committee notes with appreciation that:

(a) The old temporary housing accommodations have been demolished and their occupants adequately housed in interim housing while waiting to be permanently housed;

(b) The Government provides interim housing for evicted squatters, victims of domestic violence and families separated by divorce; and

(c) Self-built structures in squatter communities erected before 1982, and therefore protected by the relevant housing policy, have been provided in most cases with basic services including water, sanitation and access to roads, with a view to improving the living conditions of the residents.

7. The Committee notes with satisfaction that the Equal Opportunities Commission established in 1996 is effectively carrying out its mandate without interference from the Government of HKSAR.

8. The Committee notes with appreciation that the Committee's general comments are valuable source materials consulted frequently by the Human Rights Unit of the Justice Department.

9. The Committee welcomes the delegation's assurance that all rights enshrined in the Covenant contain certain justiciable aspects. Moreover, the Committee notes with satisfaction that the Covenant is invoked in Hong Kong courts.

10. The Committee welcomes the establishment of a Women's Commission in HKSAR.

11. The Committee commends the HKSAR programme for training unskilled and unemployed workers with the objective of finding employment for them. The Committee notes with appreciation that the Employers Training Board conducts training programmes for unskilled women and provides them with allowances during training courses.

C. Factors and difficulties impeding the implementation of the Covenant

12. The Committee notes that issues regarding the right of abode in relation to permanent residence and split families impede the enjoyment of economic, social and cultural rights by the families affected by the reinterpretation on 26 June 1999 by the National People's Congress Standing Committee of article 24 of the Basic Law.

13. While the "ultimate aim is the election of all the members of the Legislative Council by universal suffrage" (article 68, Basic Law), the Committee notes that the current arrangements for the election of the Legislative Council include some undemocratic features which impede the full enjoyment of economic, social and cultural rights in HKSAR.

14. The economic policies of HKSAR, based essentially on the philosophy of "positive non-interventionism", i.e. keeping taxes low and limiting government expenditure to the provision of essential services, in accordance with article 5 of the Basic Law, which guarantees a free trade, free enterprise and low tax regime for at least 50 years, have had a negative impact on the realization and enjoyment of the economic, social and cultural rights of Hong Kong's inhabitants, which has been exacerbated by globalization.

D. Principal subjects of concern

15. The Committee regrets that HKSAR has not implemented a number of the recommendations in its concluding observations of 1996, despite the delegation's assurance that these must be given effect. The Committee wishes to reiterate in particular its concern on the following issues:

(a) The fact that the Covenant's status in the HKSAR domestic legal order continues to be different from that of the International Covenant on Civil and Political Rights, the provisions of which have been incorporated into domestic legislation;

(b) The failure of HKSAR to extend the prohibition of race discrimination to the private sector;

(c) The failure of HKSAR to prohibit discrimination on the basis of sexual orientation and age;

(d) The failure of HKSAR to establish a national human rights institution with a broad mandate and its failure to establish adequate alternative arrangements for the promotion of economic, social and cultural rights;

(e) The absence of protection against unfair dismissal and the lack of adequate regulations on statutory minimum wage, working hours, paid weekly rest, rest breaks and compulsory overtime pay;

(f) The denial of the right of foreign domestic helpers upon expiration of their contract to freely seek employment and to protection from discrimination, owing to the two-week rule;

(g) The lack of a comprehensive policy for the protection of children from all forms of abuse.

16. The Committee greatly regrets that some judgements of the High Court in HKSAR express the opinion that the Covenant is "promotional" (*Mok Chi Hung v. Director of Immigration*, judgement of 5 January 2001) or "aspirational" *(Chan To Foon v. Director of Immigration,* judgement of 11 April 2001) in nature. As the Committee has confirmed on numerous occasions, such opinions are based on a mistaken understanding of the legal obligations arising from the Covenant.

17. The Committee is concerned that the Women's Commission may not have appropriate resources and powers to ensure that a gender perspective is integrated into the formulation of policy.

18. The Committee is gravely concerned about the widespread and unacceptable incidence of poverty in HKSAR. It is especially concerned that a large number of older persons continue to live in poverty without effective access to social services.

19. The Committee is deeply concerned that HKSAR lacks adequate institutional arrangements to ensure the formulation and implementation of comprehensive, integrated, consistent and effective anti-poverty strategies.

20. The Committee expresses its regret that in relation to the care of persons with mental illness, HKSAR is reluctant to authorize the prescribing of new drugs that are more costly but more effective and have been shown to produce fewer side effects for the mentally ill. In addition, the Committee notes with concern the apparent lack of initiative on the part of HKSAR to undertake public education to combat discrimination against those with mental disabilities.

21. The Committee is concerned that many individuals, including women who are homemakers, persons with disabilities and older persons, are excluded from the Mandatory Provident Fund Scheme.

22. The Committee is deeply concerned about the hardship arising from HKSAR policies on permanent residence and split families.

23. The Committee expresses its concern about the reported increase in the incidence of child abuse and suicide among the youth.

24. The Committee is concerned that the age of criminal responsibility is set at the young age of seven years.

25. While acknowledging that HKSAR has made progress in relation to housing, the Committee remains deeply concerned that the right to housing of many people in Hong Kong remains unfulfilled. In the Committee's view, bed-space apartments, or cage homes, are an affront to human dignity and roof-top structures constitute a grave risk to the life and health of their inhabitants.

26. The Committee is concerned that the Public Order Ordinance may be used to restrict trade union activities, such as peaceful campaigns to promote labour rights, which are protected by article 8 (c) of the Covenant.

E. Suggestions and recommendations

27. The Committee reminds HKSAR that the provisions of the Covenant constitute a legal obligation on the part of the States parties. Thus, the Committee urges HKSAR not to argue in court proceedings that the Covenant is only "promotional" or "aspirational" in nature.

28. The Committee again urges HKSAR to implement the Committee's suggestions and recommendations contained in its concluding observations of 1996, as well as the current ones, and to undertake whatever relevant concrete measures may be necessary towards their implementation.

29. The Committee recommends that HKSAR withdraw its reservation on article 6 and the interpretative declaration replacing its former reservation on article 8.

30. It is the Committee's view that the failure by HKSAR to prohibit race discrimination in the private sector constitutes a breach of its obligations under article 2 of the Covenant. The Committee calls upon HKSAR to extend its prohibition of race discrimination to the private sector.

31. The Committee also urges HKSAR to prohibit discrimination on the basis of sexual orientation and age.

32. The Committee urges HKSAR to establish a national human rights institution consistent with the Paris principles (1991) and the Committee's General Comment No. 10. Until such an institution is established, the Committee urges HKSAR to enhance its measures for the promotion of economic, social and cultural rights.

33. The Committee urges HKSAR to provide the Women's Commission with sufficient powers and resources to enable it to improve the status of women in Hong Kong, and to integrate gender in its policy-making and ensure wider participation of women in all spheres of public life.

34. The Committee reiterates its recommendation that HKSAR review its policy in relation to unfair dismissal, minimum wages, paid weekly rest time, rest breaks, maximum hours of work and overtime pay rates, with a view to bringing such policy into line with the HKSAR obligations as set forth in the Covenant.

35. The Committee urges HKSAR to enact legislation on equal pay for work of equal value as provided for in the Covenant.

36. The Committee urges HKSAR to adopt a comprehensive pension system that provides adequate retirement protection for the entire population, in particular for housewives, self-employed persons, older persons and persons with disabilities.

37. The Committee recommends that the Public Order Ordinance be reviewed with a view to amending its provisions to ensure freedom of trade union activities as provided for under article 8 (c) of the Covenant.

38. The Committee strongly recommends that HKSAR establish either an inter-departmental anti-poverty unit or an independent anti-poverty commission, to conduct relevant research, formulate anti-poverty strategies and monitor all policies for their impact on poverty.

39. The Committee urges HKSAR to ensure that Comprehensive Social Security Assistance levels permit recipients a reasonable standard of living consistent with articles 9 and 11 of the Covenant.

40. When formulating and implementing its policies on permanent residence and split families, HKSAR is urged to give the most careful attention to all the human rights dimensions of the issue, including articles 2 (2), 3 and 10 of the Covenant. The Committee reminds HKSAR that any limitations in connection with article 10 must be justified in relation to each element set out in article 4. The Committee urges HKSAR to reconsider extending the "concession" made by HKSAR following the reinterpretation of 26 June 1999.

41. HKSAR is urged to enhance the transparency of all relevant processes concerning permanent residence and split families. For example, the Committee recommends that all data, appropriately disaggregated (e.g. by origin of applicant), are made publicly available and tabled in the Legislative Council every six months.

42. The Committee calls upon HKSAR to adopt urgent measures to address the problems leading to youth suicide and all forms of child abuse.

43. The Committee calls upon HKSAR to amend its laws to raise the age of criminal responsibility so as to ensure the rights of the child under article 10 of the Covenant.

44. The Committee calls on HKSAR to give urgent attention to the housing rights of all Hong Kong residents, including squatters and those living in roof-top structures and bed-space apartments or cage homes. In its next periodic report, HKSAR is requested to give special attention to the impact of current policies on squatters, roof-top structures and bed-space apartments or cage homes. In particular, the Committee would like HKSAR to comment on the operation and efficacy of the Bed-space Apartments Ordinance (chap. 447).

45. The Committee recommends that HKSAR undertake a comprehensive review of mental health policy and adopt effective measures to ensure that persons with mental illness enjoy the right to adequate and affordable health care. The Committee urges HKSAR to provide public education to combat discrimination against persons with mental illness.

46. The Committee requests that HKSAR disseminate these concluding observations as widely as possible among its citizens.

47. The Committee requests HKSAR to address, in its second periodic report, the implementation of these concluding observations.

48. The Committee requests HKSAR to submit information on its progress in implementing the Committee's recommendation in paragraph 30 (race discrimination) by 30 June 2003. The Committee requests HKSAR to submit its full second periodic report in accordance with the prescribed dates of submissions.